

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**APPEAL NO. 290 OF 2006.
IN
NOTICE OF MOTION NO.3203 OF 2004
IN
CONTEMPT PETITION NO. 21 OF 2002
IN
SUIT NO. 1421 OF 1997**

Kokila H.Shah & others.

... Appellants/
Petitioners
(Org.Plaintiffs)

Versus.

Chittaranjan D.Shah & others.

... Respondents
(Org.Defendants)

ALONG WITH

**APPEAL NO. 291 OF 2006
IN
REVIEW PETITION NO. 39 OF 2005
IN
NOTICE OF MOTION NO. 3203 OF 2004
IN
CONTEMPT PETITION NO. 21 OF 2002
IN
SUIT NO.1421 OF 1997**

Kokila H.Shah and others.

... Appellants/
Petitioners
(Org.Plaintiffs)

Versus.

Chittaranjan D.Shah and others.

... Respondents
(Org.Defendants)

Shri Shyam Diwan, Senior Advocate i/by M/s.Haresh Mehta
& Co. for the Appellants.

Shri Denzil D'Mello for the Respondent.

**CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.**

DATE : 12th June, 2006.

P.C.:

1. We have heard the learned Counsel appearing for the parties in these appeals. In Appeal No.290 of 2006, the Appellants have taken exception to the order dated 18th November 2005 passed by the learned Single Judge in Notice of Motion No.3203 of 2004 in Contempt Petition No.21 of 2002 in Suit No.1421 of 1997. In companion Appeal No. 291 of 2006, the Appellants have taken exception to the order dated 23rd December 2005 (subsequently modified by order dated 27th January 2005) passed by the learned Single Judge of this Court in Review Petition No.39 of 2005 arising out of Notice of Motion No.3203 of 2004 in Contempt Petition No.21 of 2001 in Suit No.1431 of 1997. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the facts of the case in brief.

2. The Appellants in these Appeals are original Plaintiffs. The Appellants filed Suit No.1421 of 1997 for specific performance of a deed of family arrangement and for recovery of a sum of Rs.14.31 crores and other reliefs against the Respondents. on 6th May 1997, this Court granted ad-interim relief in favour of the

Appellants in Notice of Motion No.1377 of 1997 filed by the Appellants in the said suit. According to the Appellants, the Respondents committed breach of the ad-interim order passed on 6th May 1997 and therefore, Contempt Petition No.21 of 2002 was filed by the Appellants in this Court. In the said Contempt Petition, this Court passed an order dated 12th December 2002 by recording a finding that, prima facie, the Respondents have committed contempt of the ad-interim order dated 6th May 1997 passed in the suit. By the same order certain ad-interim directions were issued by the learned Single Judge. The Contempt Petition was disposed of by the learned Single Judge of this Court by order dated 15th September 2003.

3. On 27th October 2004, Notice of Motion No.3203 of 2004 was taken out by the Appellants in the disposed of Contempt Petition. On 18th November 2005, the Notice of Motion was heard by the learned Single Judge of this Court. The learned Single Judge dismissed the Notice of Motion. While dismissing the Notice of Motion, the learned Single Judge observed that the Contempt Petition was disposed of by an order dated 15th September 2003 and therefore, Notice of Motion taken out in disposed of Contempt Petition was not maintainable. The learned Judge also observed that since the Contempt Petition was itself disposed of, ad-interim order passed on 12th December 2002 does not survive at all. The Appellants

filed a Review Petition being Review Petition No.39 of 2005 seeking review of the order dated 18th November 2005. By order dated 23rd December 2005, the learned Single Judge dismissed the Review Petition by holding that the order dated 12th December 2002 which was passed in the contempt petition did not survive after the Contempt Petition was disposed of. The orders dated 18th November 2005 and 23rd December 2005 have been impugned in these Appeals.

4. Shri Diwan, learned Senior Counsel appearing for the Appellants submitted that the result of the observations made by the learned Single Judge in the impugned orders is that the ad-interim order passed in the suit on 6th May 1997 stands vacated. He submitted that the Respondents are interpreting the order to mean that the ad-interim order in the suit is not in force. He submitted that ad-interim order passed on 12th December 2002 in Contempt Petition No.21 of 2002 was to operate even after disposal of the Contempt Petition and therefore, in order dated 15th September 2003, the learned Single Judge while disposing of the Contempt Petition has granted liberty to the Respondent No.1 to approach appropriate Court for getting ad-interim order modified. He submitted that no attempt was made by the Respondent No.1 to get the ad-interim order modified and therefore, while deciding the Notice of Motion taken out by the Appellants in Contempt Petition and while

deciding the Review Petition, the learned Single Judge could not have made observations which will have the effect of vacating the ad-interim order. The learned Counsel appearing for the Respondents supported the impugned orders. He, however, categorically stated that the ad-interim order dated 6th May 1997 has not been affected by the impugned orders.

5. We have carefully considered the submissions.

Ad-interim order passed by this Court in Notice of Motion No.1377 of 1997 in the suit filed by the Appellants was specifically continued under the further orders dated 9th February 2000 passed by this Court in the suit by which the dispute between the parties was referred to the arbitration of a sole Arbitrator. It was observed that ad-interim order will continue till the disposal of the arbitration proceedings. A perusal of the order dated 12th December 2002 passed by the learned Single Judge in Contempt Petition No.21 of 2002 shows that certain ad-interim order was passed by the learned Single Judge while issuing notice to the Respondents of the Contempt Petition. By order dated 15th September 2003 the Contempt Petition was disposed of. The order dated 15th September 2003 reads thus:

". The learned Counsel appearing for the Respondent No.1 states that the Respondent No.1 without prejudice to his rights and

contentions shall deposit the monthly instalments as per the ad-interim order which is admittedly in force at the same rate at which the amount was being deposited from May, 1997 till May, 2000 i.e. 50% of the rental (minus) Society charges, within the period of six weeks from today.

. Statement is accepted.

. In view of this statement for the present, contempt petition is not entertained.

. It is clarified that the Respondent No.1 shall be at liberty to approach the appropriate court for getting ad-interim order presently in force modified. He may also approach the appropriate Court seeking order for imposition of conditions, if any, on the Petitioner's right to withdraw the amount.

. The learned Counsel appearing for the Respondent No.1 states that he is solely responsible for abiding of the order which is in force and he is solely responsible for the consequences of the statements which he has made and which has been accepted and that other Respondents are not responsible.

. Parties to act on ordinary copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy."

As the Contempt Petition was disposed of by the said order, naturally all ad-interim/interim orders passed in the Contempt Petition stood vacated by the said order. The liberty granted by the learned Single Judge in order dated 15th September 2003 is obviously a liberty to approach the appropriate Court for getting the ad-interim order dated 6th May 1997 passed in the suit modified. The liberty granted by the learned Single Judge is obviously in respect of the said ad-interim order as after disposal of the Contempt Petition, this was the only ad-interim order operating in favour of the Appellants.

6. Thus it is obvious that ad-interim/interim order in Contempt Petition No.21 of 2002 passed on 12th December 2002 did not operate after 15th September 2003 and the said order came to an end when the Contempt Petition was disposed of. That is the precise observation made by the learned Single Judge in the impugned orders. No fault can be found with the impugned orders. It is obvious that the observations made in the impugned orders do not have the effect of

vacating ad-interim relief or interim relief, if any, which is operating in Suit No.1421 of 1997. The limited observation of the learned Single Judge made in the impugned orders is that the ad-interim relief granted on 12th December 2002 in the Contempt Petition stands vacated as a result of disposal of the Contempt Petition.

7. In view of what is stated above, no fault can be found with the impugned orders. Subject to the observations made above, the Appeals are dismissed with no order as to costs.

CHIEF JUSTICE

ABHAY S.OKA, J.